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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/576,905

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Raphael Belaubre

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EXAMINER

DEFRANK, JOSEPH S

ART UNIT

PAPER NUMBER

4175

MAIL DATE

DELIVERY MODE

01/11/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/576,905	Applicant(s) BELAUBRE, RAPHAEL	
	Examiner JOSEPH DEFRANK	Art Unit 4175	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12-22 is/are pending in the application.
- 4a) Of the above claim(s) 16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) 12-15 and 17-22 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 April 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>4-21-06</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Election/Restrictions

1. This application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The species are as follows:

- I. Figures 1-5
- II. Figures 6-10

Applicant is required, in reply to this action, to elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. The reply must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

2. The claims are deemed to correspond to the species listed above in the following manner:

- I. Claims 12-16, 18-22
- II. Claims 12-15, 17-22

The following claim(s) are generic: 12-15, 19-22

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3. The species listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same or corresponding special technical features for the following reasons: The blades of the cutter of group I share the same pivot axis, while the blades of the cutter of group II have two distinct pivot axes.

4. During a telephone conversation with Donald Lucas on December 21st, 2008 a provisional election was made without traverse to prosecute the invention of group II, claims 12-15 and 17-22. Affirmation of this election must be made by applicant in replying to this Office action. Claim 16 is withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Oath/Declaration

5. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:
It does not state that the person making the oath or declaration acknowledges the duty to disclose to the Office all information known to the person to be material to patentability as defined in 37 CFR 1.56.

Specification

6. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. **The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided.** The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. Claims 12-15, 17, and 19-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Van Keppel et al. (US Patent 5,937,523 as cited in IDS) in view of DiMatteo et al. (US PGPub 2001/0005941).

10. With respect to claims 12 and 17, Van Keppel et al. discloses a cigar cutter device comprising a pair of blades (30), said blades being superposed, and each blade being movable in pivoting about an axis (where pin 16 resides) and including handle (32) and drive means (arm 14) and a sharp edge (blades 30), said sharp edge

presenting an inside face co-operating in a cutting plane with the inside face of the cutting edge of the other blade, said device further comprising means for connecting together said two superposed blades (pin 16, as well as lock setup of figure 6), comprising at least one connection element (16) located at said pivot axis, the device including mechanical coupling means (16) for coupling pivoting of the two blades about their said respective pivot axes (same axis), said sharp edges presenting respective leading profiles that are concave and symmetrical (see figure 3) to each other about said axis, said profiles preferably being substantially semicircular. Van Keppel et al. does not disclose said mechanical coupling means comprising at least two toothed portions secured respectively to each of said blades, and co-operating by meshing in such a manner as to enable said blades to move simultaneously and symmetrically about a middle axis.

DiMatteo et al. discloses a pair of gardening shears where the handles each have their own pivot axes (60 and 62) and are coupled by two, convex meshing, identical toothed gears (34 and 36) which mesh in such a manner as to enable the handles to move simultaneously and symmetrically about a middle axis. DiMatteo et al. discloses the advantage of such a geared setup is that the cutting load is shared between the two handles (paragraph 26). It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the arms (14), and thus the blades (30), of Van Keppel et al. to be on offset axes and meshed with two gears in order to evenly distribute the load encountered while cutting a cigar between the two lever arms in view of the teachings of DiMatteo et al.

11. With respect to claims 13 and 14, Van Keppel et al. discloses the cigar cutter having two plates (18) each having an orifice (26) that is symmetrical about said middle axis and that is circular, being suitable for receiving a cigar (see figure 1), said plates being secured to the two blades (30) at least via their said pivot axes, and said plate being disposed against the outside face of said blades (30; see figure 4).

12. With respect to claim 15, the cigar cutter having a gear transmission of Van Keppel et al. in view of DiMatteo et al. discloses the toothed portion of the gears (34 and 36 of DiMatteo et al.) inscribed in a circular envelope centered on said pivot axes (60 and 62 of DiMatteo et al.) of said blades (30 of Van Keppel et al.).

13. With respect to claims 19 and 20, Van Keppel et al. discloses the cigar cutter having a torsion spring (42) between the two blades (30). Van Keppel et al. also disclose the cigar cutter having a locking mechanism (shown in figure 6) designed to keep the two blades in a closed-together position when the cutter is not in use.

14. With respect to claim 21, Van Keppel et al. discloses the cigar cutter including abutment guide means enabling the relative displacement of each blade to be limited, preferably comprising at least one slider (44) suitable for moving in at least one slideway (36) that is preferably circular, said slider being secured to at least one of said blades or said plate, and said slideway being provided in the other one of said blades or where appropriate in said plate. The slider (44) is also the locking mechanism and is secured in place by the hole (44a) in the plate. The user cannot push the blades further together than after the slider (44) hits the end wall of the slideway (36) of each blade.

15. With respect to claim 22, the device of Van Keppel et al. in view of DiMatteo et al. is not only capable of, but is intended to cut a cigar by inserting it between the two blades (30 of Van Keppel et al.) through the orifice (26 of Van Keppel et al.), pivoting the blades towards each other by imparting said simultaneous and symmetrical relative displacement (through the gear transmission of DiMatteo et al.) so as to cut the cigar. The user does this with the help of the drive means (handles 32 on arm 14 of Van Keppel et al.).

16. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Van Keppel et al. (US Patent 5,937,523 as cited in IDS) in view of DiMatteo et al. (US PGPub 2001/0005941) as applied to claim 12 above, and further in view of Eiichi et al. (JP H11-018745 A).

Van Keppel et al. in view of DiMatteo et al. discloses the cigar cutter wherein said sharp edge of said blade (30 of Van Keppel et al.) is situated between said pivot axis and said drive means (handle 32 on arm 14 of Van Keppel et al.) thereof, but does not disclose the handle including an orifice suitable for receiving at least one digit. Examiner notes that handles that allow the user to insert a finger to assist in holding the device while cutting are extremely well known in the cutting arts. Eiichi et al. discloses a cigar cutter with each handle (6) having a hole opening for the user's fingers (4a and 4b). All the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention. In this case, adding a loop to the

handle gives the user a better grip on the cigar cutting device. Thus, it would have been obvious to a person of ordinary skill in the art at the time the invention was made modify the handle (32) of Van Keppel et al. in view of DiMatteo et al. in order to loop around and provide an orifice for the user to insert a finger during the use of the cutter in view of the teachings of Eiichi et al.

Conclusion

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art of Kamphaus and Toutscheff are noted as being considered pertinent to the applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOSEPH DEFRANK whose telephone number is (571)270-3512. The examiner can normally be reached on Monday - Thursday; 8am-6pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrence Till can be reached on (571) 272-1280. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Terrence R Till/
Supervisory Patent Examiner, Art Unit 4175

Joseph De Frank
Examiner
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JD
1-8-08
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